

Remarks/Arguments

This paper is submitted responsive to the office action which was mailed on January 29, 2009. Reconsideration of the application is respectfully requested.

In the aforesaid action, the Examiner has made a final rejection based upon newly cited prior art to Buelna et al., US Patent 6,719,766. This patent is not prior art for purposes of this invention as the '766 patent was granted after the filing date of the present application, and was entirely or wholly owned by the same person(s) or organization(s)/business entity(ies) at the time the claimed invention (in this application) was made. Specifically, at the time that the present invention was made, it was under obligation of assignment to the then assignee of the '766 patent, Novare Surgical Systems, Inc. Both that patent and the present application have since been assigned to Vitalitec International, Inc. in an assignment recorded at Reel 017870 Frame 0743. Under these circumstances, the '766 patent is not prior art to the present claims for purposes of obviousness rejections.

Since the '766 patent forms a substantial part of each art rejection made by the Examiner, it is believed that the rejections should be withdrawn and that the present claims are in condition for allowance as discussed in the interview held with the Examiner prior to discovery and application of the '766 patent.

It is believed that the above claims clearly define over all art of record, and in that the claims are now in condition for allowance. If, upon consideration of this response, the Examiner is of the opinion that issues remain which could be

10/664,273

Response dated July 29, 2009

Page 13 of 13

resolved by telephone interview, the Examiner is invited to telephone the undersigned and discuss same.

This paper is accompanied by authorization to charge a fee for an extension of time, and also for filing a notice of appeal. It is believed that no additional fee is due in connection with this paper. If any fee is due, please charge same to Deposit Account 02-0184.

Respectfully submitted,
George D. Hermann et al.

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